

**ATTORNEY-CLIENT PRIVILEGED
MEMORANDUM**

TO: Darryl Smith, Deputy Mayor

FROM: Patrick Downs, Assistant City Attorney

SUBJECT: Council Deliberation of Homeless Transitional Encampment Legislation Prior to Completing SEPA Review

DATE: March 11, 2011

Legislation was recently transmitted to the City Council that would fund construction of a homeless transitional encampment and amend the City's Comprehensive Plan and Zoning Code to allow the facility. Review of the legislation under the State Environmental Policy Act (SEPA), which is on-going, was not completed prior to transmitting the legislative package to Council. As a result, the Council determined that the legislation cannot be considered without SEPA being completed.

Under State and City law, an action concerning a proposal, in this case adoption of legislation, is not to occur until the SEPA responsible official issues a final determination of nonsignificance or final environmental impact statement.¹ An action with regards to legislation is defined by SEPA as the *adoption* of legislation; including in this case, the funding request and the proposed amendments to the City's Comprehensive Plan and Zoning Code.²

Transmitting legislation to the Council or the Council considering legislation are not actions as defined by SEPA. Further, it is the long-standing advice of the Law Department that SEPA must be completed prior to Council's final adoption of legislation.

It is within the Council's discretion to consider the legislation; the Council cannot, however, adopt the legislation until SEPA has been completed.

¹ WAC 197-11-070(1); SMC 25.05.070.A (an action cannot be taken until the responsible official has issued a final determination of nonsignificance or a final impact statement).

² WAC 197-11-704(2)(b); SMC 25.05.704.B.2.a (*adopting* an ordinance is an action under SEPA).